

Women's Aid Federation Northern Ireland

A Briefing Paper on Proposed Changes to Criminal and Civil Legal Aid & Domestic Violence

26th June 2013

General issues relating to Legal Aid reform

- Women's Aid recognises that reforms and savings must be made within the Legal Aid system, and that the per capita spend on Legal Aid, in particular civil Legal Aid, in Northern Ireland is much higher compared to that in England and Wales.
- However, we strongly urge that these reforms do not impact negatively upon victims of domestic violence and their families. It is a fundamental human right for women and children to live free from the threat of domestic violence. Finance should never be a barrier to accessing protection and support from the courts, whether it is to secure a non-molestation order, occupation order or injunction, to engage in child contact and residence proceedings to protect children, or any other relevant court proceeding. If further obstacles to getting assistance and protection from the courts impede domestic violence victims, more victims will lose out and be forced to remain in high-risk, life threatening situations. Specifically in response to your consultation letter, we urge that domestic violence-related legal work is not removed from Legal Aid.

Financial Abuse

- It is crucial that any reforms do not leave women, who are victims of financial abuse, unprotected. Financial abuse is included within the government's own definition of domestic violence in the *Tackling Violence At Home* Strategy. Legal Aid must be readily available to all those without access to any funds because of an abusive partner, without conditions or contributions, to enable them to access the courts. Some women who are domestic violence victims may appear on paper to have access to the necessary money to fund their cases, but in reality are penniless due to the financial abuse they suffer. If the current reforms go ahead without any disregards for domestic violence victims, many of our women who suffer financial abuse will be unable to seek justice and protection in the courts.

Obligations under Domestic & Sexual Violence Strategies

- Women's Aid firmly supports the government's commitment to eradicating domestic and sexual violence, and the Domestic and Sexual Violence strategies which are in place and soon to be merged. We strongly urge that no Legal Aid reforms should undermine or undo any of the commitments within these strategies, and that all

government work should reinforce these strategies and complement their aims. This can also be said for obligations under adult safeguarding and child protection – we urge that any changes to Legal Aid provision should be in keeping with the government’s duty to protect vulnerable adults and children, and that no provision should bar vulnerable adults or children from justice.

Outcomes for victims of domestic violence

- In our professional experience, although infrastructure and processes may be in place, the actual experience of court and outcomes from the court process are not delivering justice for victims of domestic and sexual violence. The current criminal and civil legal systems are simply not working to protect victims of domestic violence. Excessive delays, insufficient usage of special measures for vulnerable victims, lack of information and knowledge sharing between criminal, civil and family courts of domestic violence relevant to cases, and general lack of training and knowledge about domestic violence on the part of justice agencies and staff all contribute to a negative experience of court for victims.

Specialist Domestic Violence Courts

- Given the exceptional nature of domestic and sexual violence crimes, and the complexities that arise out of a victims having an intimate relationship with the perpetrator, it is crucial that the understanding of a domestic violence situation is consistent across all court proceedings, from criminal assault charges to child custody arrangements to divorce. We welcome the current pilot listings arrangement for domestic violence cases in the North-west. However we urge that this leads to the establishment of full specialist domestic violence courts across Northern Ireland, along the lines of those already in place in England & Wales and in Scotland, which have proved to be extremely successful.

Absence of domestic violence issues in consultations

- We note with concern that domestic violence is barely mentioned across the consultation documents. Nor is there any indication of whether the current Legal Aid exception for domestic violence victims seeking non-molestation orders¹ will remain. The current DV exception is essential to provide victims with access to the courts so that they may protect themselves and their children from a violent partner or ex-partner.

¹ Authorisation 8 by the Department of Justice under article 10(2)(a) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, allowing for Legal Aid for ABWOR in proceedings relating to the Family Homes and Domestic Violence (Northern Ireland) Order 1998

Impact of Welfare Reform

- We are especially concerned about the potential impact of welfare reform on Legal Aid, particularly if an individual will be assessed on the basis of the household under Universal Credit changes. For victims of domestic violence, this equates to being assessed on the situation of the person who is abusing you, without any consideration for any financial abuse that may exist within the relationship or how much access the woman has to the household income. This reform, if implemented, will quite simply put many women in mortal danger and prevent them from leaving those relationships with the assistance of the courts.

Issues arising from individual Legal Aid reform projects

1. Review of Crown Court Fees / magistrate court fees

Women's Aid believes that any reforms of Legal Aid fees must be governed by the principle that no one should be denied justice because they cannot afford it. In the event that an individual must pay fees, it must be possible and feasible for them to do so. Where domestic violence is a factor, the impact of financial abuse on a woman's ability to access funds that may technically belong to her should be part of that calculation.

2. Legally aided representation in civil cases

We agree that savings can and should be made by reducing unnecessary extra counsel in proceedings. If a senior counsel is not required in a case, or an accompanying junior counsel is not required to accompany a senior counsel, it seems to us to be a waste of public money to fund the extra barrister's fee out of the Legal Aid pot. These reforms would both reduce the Legal Aid bill without adversely impacting upon an individual's right to receive Legal Aid, and would also serve to make the court room a less daunting place for victims, witnesses and parties to a case.

3. Alternative to money damages

Although it is a rare scenario in which a victim of domestic violence may take a personal injury claim arising out of the violence or actions of a perpetrator, Women's Aid feels that it is important to stress that personal injury compensation for victims of domestic violence should not be affected by these reforms.

4. Review of financial eligibility for civil and criminal Legal Aid

It is a matter of great concern that these proposals do not expressly protect the current Legal Aid exception for domestic violence victims seeking non-molestation orders, or create a disregard for domestic violence victims along the lines of the proposed disregard for pensioners.

Domestic violence is not just relevant to criminal assault cases or applications for non-molestation orders – it goes to the heart of all cases involving that perpetrator and victim, and their children. These proposed reforms stand to negatively impact upon a domestic violence victim's ability to divorce her perpetrator, to protect her children from her abuser, and to seek other protections not covered by the current exception such as Occupation Orders and injunctions.

The proposals to extend financial contributions for the duration of a case, as opposed to for 12 months, will disproportionately negatively impact upon victims of domestic violence. The same can be said for proposals to apply an income cap and remove passporting on capital for those on passported benefits. Financial abuse must be taken into account when assessing eligibility for Legal Aid, otherwise victims of financial abuse may not be granted Legal Aid, even if they do not have access in reality to any money. Furthermore, if the high cost of relocating and setting up a new life is not considered as part of a Legal Aid assessment, those victims with some capital or so-called 'disposable income' may nonetheless find themselves unable to access justice due to the combined resource drain of leaving an abuser and ineligibility for Legal Aid.

These reforms may also lead to a situation where a perpetrator is able to force a victim to abandon a case by drawing a case out, knowing that the victim cannot afford to pay contributions indefinitely. It is already a reality in Northern Ireland that perpetrators deliberately draw out cases and create vexatious delays in court to coerce their victims to drop cases. It is therefore essential that delay, and especially vexatious delays, are eradicated within the justice system before such reforms are made to the Legal Aid system.

5. Changes to the Legal Aid (Assessment of resources) Regulations

We appreciate that these reforms are intended to bring greater equality to the delivery of Legal Aid, and to close a specific loophole. Women's Aid is generally supportive of this aim, however we would urge that the particular circumstances of certain people be taken into account. For instance, if someone is living with a family member because they have caring duties, they are not merely receiving free board or food for nothing, but are in fact performing an indispensable service to both the person they care for and also the health service.

Some victims of domestic violence move into a family member's home after leaving an abusive relationship. Though they may be in benefit in some cases of 'free food' etc, this is often out of necessity, as the costs of setting up a new life after fleeing an abusive situation are extremely high. The benefit in kind received is far overshadowed by the financial demand of their new situation, and applying these rules to women in these circumstances may financially bar them from accessing the courts.

6. *Review of the use of expert witnesses*

While we think it reasonable that expert witnesses are reimbursed for their work and travel, we appreciate that money for them comes from the public purse and that this money should be spent responsibly to best effect.

We would however wish to point out that expert witnesses are very rarely called in cases concerning domestic violence in Northern Ireland, in contrast to their more regular use in cases in England and Wales. It is our view that it might be beneficial if expert witnesses were called upon in domestic violence cases more often.

7. *Change status of NILSC to an Agency*

Women's Aid welcomes the proposals, in order to ensure that decisions in the granting of Legal Aid are independent, equitable and transparent. In our view it is logical that the Minister and the Department should be involved in policy making but be completely removed from influencing decisions on individual cases. Therefore we are supportive of the status of NILSC being changed to an Agency.